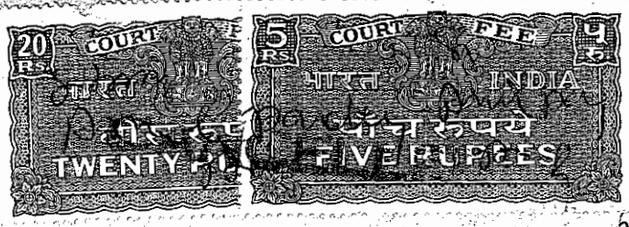

CF0000110183

IN THE HIGH COURT OF MADHYA PRADESH : JABALPUR

M.P.No. 750 of 1990

PETITIONERS :- 1- Sant Charan son of Sewak Ram

2- Hori Lal son of Sewak Ram

(Now Major) Cultivators of Mouja Jampali, Tahsil Sakti, Distt. Bilaspur.

5019
26-3-90
G R Kachhwaha

-Versus-

26-3-90 RESPONDENTS :- ~~xxSxxxx~~

1- Collector, Bilaspur.

2- S.D.O.-cum-Debt Relief Court Sakti, District - Bilaspur.

3- Mst. Dhiya Bai widow of Chhotu,

4- Hulas Ram son of Chhotu,

Cultivators of Mouja Jampali, Tah. Sakti, Distt. Bilaspur.

PETITION UNDER ARTICLE 226/227 CONSTITUTION OF INDIA.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WP 750/90 सन् 200

31 H.F.R.

..... विरुद्ध .....

16/6/05

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

16.6.2005

Mr. Anil Kumar Pandey, counsel for the petitioners.

Mr. Bhaskar Pyasi, Panel Lawyer for respondent No.1 & 2.

None on behalf of respondent No.3 & 4.

By this writ petition under Article 226/227 of the Constitution of India the petitioners have questioned the legality, propriety and correctness of order dated 13.1.1987 passed by the Sub Divsional Officer, Sakti whereby the Sub Divisional Officer has allowed the application of respondent No.3 & 4 filed under Section 5 of the Chhattisgarh Samaj Ke Kamjor Vargon Ke Krishi Bhumi-Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapne Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred to as ' the Adhiniyam, 1976'), set aside the sale deed executed in favour of the petitioners by respondent No.3 & 4 and ordered for restoration of the possession of land. The petitioners have also questioned the order dated 11.10.1989 passed by the Additional Collector, Korba thereby affirming the order passed by Sub Divisional Officer.

On filing of this writ petition notices were issued to the respondents and notices were served on respondent No.3 & 4 on 24.7.1990 but inspite of service of notice they failed to appear before the court. Perusal of appellate order dated 11.10.1989 also shows that respondent No.3 & 4 failed to appear before the Appellate Court in response to the court's notice. Special Post Card (SPC) was also sent by this Court to them but nothing has been heard on behalf of respondent No.3 & 4. Therefore, in the circumstances arguments of

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक 32

मामला क्रमांक ..... **सन्** **200**

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

learned counsel for the petitioners and learned Panel Lawyer for respondent No.1 & 2 were heard.

Brief facts leading to filing of this writ petition are that on 21.3.1975 respondent No.3 & 4 executed a registered sale deed in favour of the petitioners in respect of land bearing Khasra No.68/1 area 0.70 acre in consideration of Rs.600/-. Thereafter, the petitioners have moved application before the Tehsildar for mutation of said land in their names. The Tehsildar after issuing notices to the vendors and a proclamation in the village mutated the names of petitioners as no objection was filed in response to the said notice and proclamation. However, on 3.12.1983 respondent Nos. 3 & 4 moved an application under Section 5 of the Adhiniyam, 1976 for setting aside the sale deed and restoration of land on the ground that the land in question was never transferred in consideration, as respondent Nos. 3 & 4 were in need of money for treatment of husband of respondent No.3, therefore, they took Rs.600/- from the father of the petitioners and land in question was mortgaged in favour of the petitioners instead of sale with the understanding that on repayment of loan advanced the said land will be returned to respondent No.3 & 4. Further case of respondent Nos. 3 & 4 was that the said money along with interest amounting Rs.700/- was returned to the petitioners but they refused to reconvey the land. Therefore, the application was filed.

Learned Sub Divisional Officer on receiving the said application issued notices to the petitioners, initiated the enquiry and after conducting the enquiry passed the impugned order (Annexure P-4).

(क्रमशः पृष्ठ देखिये)

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

33

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Being aggrieved by the order of SDO the petitioners preferred an appeal before the Additional Collector, Korba who in turn vide order dated 11.10.1989 (Annexure P-5) rejected the appeal and affirmed the order dated 13.1.1987 passed by the SDO.

I have heard learned counsel for the petitioners Mr. Pandey & Panel Lawyer on behalf of respondent No.1 & 2 Mr. Pyasi.

Learned counsel for the petitioners argued that in the first instance learned S.D.O. ought to have conducted the preliminary enquiry and ought to have issued the noticec to the parties only after satisfying himself that the transaction in question is a prohibited transaction of loan. He further argued that learned S.D.O. ought to have arrived at a conclusion that the petitioners are the money lenders. He also argued that the evidence adduced by the parties is not correctly appreciated by the Sub Divisional Officer, moreover, once the SDO considered one Lakhi Ram to be an important witness and he summoned him as a court witness, as according to the evidence adduced by respondent Nos. 3 & 4 the money was advanced in his presence, but ultimately SDO did not examine that witness to whom he considered to be an important witness. In the last, he argued that finding of the SDO is contrary to the provisions of the Adhiniyam, 1976 and the appellate court also without considering the provisions of the Adhiniyam, 1976 passed the illegal order affirming the order of SDO.

On the other hand, learned Panel Lawyer Shri Pyasi argued that perusal of order of SDO shows that the land in question was not transferred but it was mortgaged in lieu of money advanced to

(पेज-2 देखिये)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	respondent Nos. 3 & 4 and petitioners even then the land was not reconveyed in favour of respondent Nos. 3 & 4, therefore, the provisions of Adhiniyam, 1976 were attracted and perfect legal orders have been by the SDO & Appellate Court. He further argued that the SDO after evaluating the evidence adduced by both the parties reached to the conclusion that there were material contradictions in the evidence of the petitioners, therefore, he rightly disbelieved the evidence of the petitioners and believed the evidence of respondent Nos. 3 & 4. He further submits that the petitioners were minors at the time of transaction and they did not know anything about the transaction, therefore, their evidence was wholly unreliable.	that money was returned to the

Having heard learned counsel for the parties, I have perused the impugned orders and relevant records.

In order to appreciate the arguments advanced by learned counsel for the parties it will be profitable to have a glance on the provisions of the Adhiniyam, 1976. The Adhiniyam was enacted with a purpose to better economic condition of holders of agricultural land in the weaker sections of the people by providing further relief from agricultural indebtedness by nullifying the land grabbing designs resorted to in many a form by lenders of money while and after extending credit to them and matters connected therewith. Therefore, this Adhiniyam was enacted with a purpose to nullify the transaction regarding agricultural lands which are executed in favour of the money lenders in lieu of money advanced to the weaker agriculturists. Section 2 (c) of the Adhiniyam, 1976 envisages that

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

"holder of agricultural land" in the weaker sections of the people means a holder of land used for purposes of Agriculture not exceeding eight hectares of unirrigated land or four hectares of irrigated land within the State'. Section 2 (d) envisages that:

> *"lender of money' means a person advancing loan to a holder of agricultural land, whether registered under the Chhattisgarh Money Lenders Act, 1934 or not"*

Sub-section (f) of Section 2 of the Adhiniyam defines the 'prohibited transaction of loan' means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land in any form described in clauses (i) to (iv) of sub-section (f). Section 4 prescribes for all prohibited transactions of loan to be subject to protection and relief under this Act notwithstanding anything contained in the Code or any other enactment for the time being in force or any decree or order, if any, of any court or authority be subject to protection and relief in accordance with the provisions of this Act. Section 5 prescribes the application to be filed by a holder of agricultural land. Section 6 envisages the enquiry to be conducted by the Sub-Divisional Officer in respect of such transactions. Section 6 (1) prescribes that *'on receipt of an application under Section 5 of the Act the SDO is required to conduct a preliminary enquiry as he may in the circumstances of the case deem fit, to ascertain whether the transaction of loan is a prohibited transaction of loan and on being satisfied that section 4 applies to such transaction, he shall, after recording his opinon therefor, proceed to conduct an enquiry into such transaction in the manner hereinafter*

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक 36

मामला क्रमांक ..... सन् 200

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

provided Sub-section 4 of Section 6 further envisages that "*during the enquiry the Sub-Divisional Officer shall, for the purpose of ascertaining the true nature of transaction of loan, try to collect, as far as may be, information with respect to the following facts, namely;-*

(i) the amount of principal money;

(ii) the market value of the land at the time of the transaction;

(iii) adequacy of the amount of principal money as consideration for sale in the context of then market value under clause (ii);

(iv) whether the consideration shown in the document was paid in whole or in part privately or before the Sub-Registrar;

(v) whether possession of the land was actually delivered to the lender of money as per recitals in the said document. If not, when and in what manner the lender of money obtained possession of the land;

(vi) what were the terms of the actual agreement between the lender of money and the holder of agricultural land including the rate of interest;

(vii) the extent of urgency for the loan and the availability of other sources to the holder of agricultural of land to obtain the same;

(viii) payment, if any, made by the holder of agricultural of land to the lender of money towards the loan;

(ix) whether the lender of money is registered money lender or not;

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —7—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(x) any other surrounding circumstances which the Sub-Divisional Officer may deem fit to consider;"

Therefore, in order to attract the provisions of this Act the Sub-Divisional Officer is required to conduct a preliminary enquiry to ascertain whether the transaction of loan is prohibited transaction of loan and on satisfying and after recording his opinion he is required to conduct an enquiry. In order to ascertain the applicability of this Act and prohibited transaction of loan the first requirement is that holder of agricultural land must not possess the land exceeding eight hectares of unirrigated land or four hectares of irrigated land; the second requirement is that the person who has advanced money must be a money lender and the third requirement is that in order to ascertain whether the particular transaction is a prohibited transaction of loan or not the Sub-Divisional Officer is required to ascertain that the transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land in any form as mentioned in clauses (i) to (iv) of sub-section (f) of Section 2. Therefore, a person who has advanced the loan must be a money lender as has been held by Division Bench of M.P. High Court in the matter of **Bodhanlal Vs. Additional Collector, Bilaspur and others** reported in **1989 M.P.L.J. 58** that *'from the definition of the term 'prohibited transaction of loan', it is clear that in order to come within the purview of prohibited transaction of loan, the loan must be advanced by a lender of money. A stray transaction of loan by a person will not make him a 'lender of money'.* In this respect if we look into the evidence of respondent No.3, she has categorically stated in

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

her examination-in-chief (Annexure P-2) that '*Sewak Ram sahukari nahin karta tha*" that means the father of petitioners was not a money lender. She has further categorically stated that since her husband was sick and she was in need of money, therefore, she took Rs.600/- from the petitioners' father at the time of execution of deed.

Now coming to the question whether before passing the impugned order the Sub-Divisional Officer satisfied himself with the requirements of sub-section (4) of Section 6 of the Act. Clauses (2) & (3) of sub-section (4) of Section 6 prescribes that market value of the land at the time of the transaction & adequacy of the amount of principal money as consideration for sale in the context of then market value under clause (ii) are to be ascertained by the SDO. But in this case if we look into the impugned order, the SDO has not recorded in his finding that Rs.600/- which was advanced to respondent Nos. 3 & 4 was insufficient money or that was not as per market value of the land in question. This is one of the important factor to ascertain whether the particular transaction is a prohibited transaction of loan or not and that is why the Legislature has included these clauses. The Sub-Divisional Officer ought to have ascertained whether money advanced was as per market value or not, but this fact has not been enquired by the SDO before passing the impugned order. Apart from that SDO has not recorded any finding regarding other clauses of sub-section (4) of Section 6 of the Act.

Now coming to the question that whether the amount was returned by respondent Nos. 3 & 4 to the petitioners or Sewak Ram. It is an admitted position that no document has been produced or

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 9 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

said to have been executed by the petitioners in favour of respondent Nos. 3 & 4 about the return of the amount. In the application filed under Section 5 of the Adhiniyam, 1976 respondent Nos. 3 & 4 had mentioned that they have returned Rs.700/-, whereas respondent No.3 in her evidence stated that she returned Rs.1,000/- (Rs.600/- principal amount + Rs.400/- interest). Therefore, there is material contradiction between two, moreover, it has come on record, as per evidence of respondent, that money was advanced to them in presence of one Lakhiram and terms were settled. In the first instance, the SDO decided to examine said Lakhiram as a court witness but unfortunately, in the first instance said Lakhiram did not appear and when Lakhiram appeared the SDO was not in Court and in that process that witness was not examined. Therefore, without examination of that witness the SDO's finding cannot be said to be legal, merely on the evidence of respondent Nos. 3 & 4 without any corroboration it was not safe to believe their evidence particularly when the application for setting aside the sale was filed after 12 years of the transaction. The father of the petitioners and petitioners has denied the return of money, even the witness to the sale deed namely Panchram has stated that infact it was a sale not a mortgage. Even otherwise, the Rule 4, 5, 6 & 7 framed under the Act envisages about the ascertainment of the price of land but the SDO failed to get a report from the Tehsildar and Patwari concerned regarding value of the land and about the transaction. Therefore, the finding of the SDO is not based on the reliable evidence when independent evidence of Tehsildar, Patwari, Lakhiram could have been collected but that has

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

40

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	-10-	

not been collected. The SDO rejected the evidence of the petitioners on the ground that the petitioners & said Panchram are relatives, but in my opinion this cannot be a ground for rejecting the evidence outrightly unless some other material is available on record which makes the evidence of these persons untrustworthy. The SDO contrary to the evidence on record, recorded the finding that the petitioners and their father are dealing in money lending, whereas there was no such evidence on record. Even respondent No.3 has categorically stated in her examination-in-chief that the father of the petitioners was not dealing in money lending. Therefore, on account of the above infirmities in the order impugned and the appellate order, I am of the opinion that on the basis of the record and evidence available on record the provisions of Adhiniyam, 1976 were not attracted, therefore, orders passed by S.D.O. & Additional Collector cannot be sustained and are contrary to the provisions of the Adhiniyam, 1976 because firstly there is no evidence that the father of the petitioners was the money lender; secondly there is no reliable evidence that the document in question was executed as a mortgage deed and not a sale deed and thirdly, in order to ascertain whether it is a prohibited transaction of loan or not the SDO has not ascertained the fact about the market value of the land, which can be one of the factors for deciding whether the transaction in question was prohibited transaction or not. Even otherwise, the Sub Divisonal Officer has not made any compliance of sub-section (1) of Section 6 of the Act.

(पाठ दाखय)

O/C

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक 41

मामला क्रमांक ..... **सन्** **200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —11—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	In the result, I am of the opinion that the findings of Sub Divisional Officer & the Appellate Court are contrary to the record and the same are recorded without satisfying the requirement of various provisions of Adhiniyam, 1976, as such are incorrect & illegal and are liable to be set aside. As such, petition of the petitioners is allowed and impugned orders are hereby set aside. Certified copy as per rules. **Sd/-** **L.C. Bhadoo** **Judge**	

Roshan

(पीछे देखिये)